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IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1944.

No. 332

IRVING K. HUTCHINSON, ET. AL.,
Petitioners,
vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO,
ET AL.,
Respondents.

PETITION OF IRVING K. HUTCHINSON, ET AL., FOR WRIT OF
CERTIORARI.

AND

MOTION TO CONSOLIDATE WITH THE PEOPLE, EX REL. RE-
CONSTRUCTION FINANCE CORPORATION vs. BOARD OF EDU-
CATION OF THE CITY OF CHICAGO.

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IRVING K. HUTCHINSON, ET. AL.,
Petitioners,
vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO,
ET AL.,
Respondents.

**PETITION OF IRVING K. HUTCHINSON AND OTHERS
FOR WRIT OF CERTIORARI**

and

**MOTION TO CONSOLIDATE WITH THE PEOPLE, EX
REL. RECONSTRUCTION FINANCE CORPORATION,
vs. BOARD OF EDUCATION OF THE CITY OF CHI-
CAGO.**

To the Honorable the Supreme Court of the United States:

Irving K. Hutchinson and 211 other judgment creditors of the Board of Education of the City of Chicago, Illinois, respectfully pray that a writ of certiorari be directed to the Supreme Court of Illinois, directing that Court to certify to this Court the record in the case of *Irving K. Hutchinson, et al. v. Board of Education of the City of Chicago, et al.*, No. 27490 in that Court, in order that the decision and judgment of said Court rendered May 11,

1944, in the consolidated appeal entitled *City Bank and Trust Company v. Board of Education*, 386 Ill. 508, 54 N. E. (2d) 498, may be reviewed by this Court, and the judgment reversed.

Summary Statement of Matter Involved.

April 15, 1938, Irving K. Hutchinson and 211 other holders and owners of unpaid tax anticipation warrants issued by the Board of Education of the City of Chicago, Illinois against its 1929 tax levies, obtained money decrees in a suit for accounting against said Board of Education for their respective pro rata shares of the proceeds of collections of the taxes against which said warrants were issued which were received into the treasury of said Board of Education. (R. 133-176.) No appeal was taken from the decree entered in the suit in which these judgment creditors were joint plaintiffs, and the decree stands unmodified and unreversed. November 19, 1942, the Board of Education filed a motion to vacate the decree and to dismiss the suit on the ground that the Supreme Court of Illinois in *Leviton v. Board of Education*, 374 Ill. 594, 30 N. E. (2d) 497, had decided that another decree entered against the Board of Education on identically the same theory and facts as petitioners' decree was void. (R. 176-183.) The motion to vacate and to dismiss was denied (R. 182), and the Board of Education appealed to the Supreme Court of Illinois. (R. 183.) That Court held that the decision in the second appeal in *Leviton v. Board of Education*, 385 Ill. 599, 53 N. E. (2d) 596, (which case is also before this Court on petition for writ of certiorari in *Lewis v. Board*), was tantamount to a decision that neither the final decree in petitioners' accounting suit nor identical decrees in other accounting suits, created any liability against the Board of Education and could not be paid by it under the

Illinois Constitution (R. 193-194), and that therefore the questions presented by the consolidated appeal had become moot, and it dismissed the appeals. (R. 196.) The opinion of the Supreme Court of Illinois is reported in *City Bank and Trust Co., et al. v. Board of Education*, 386 Ill. 508, 54 N. E. (2d) 498, and is printed in full at pages 185 to 196 of the record.

Statement of Jurisdictional Grounds.

The jurisdiction of this Court is invoked under Section 237(b) of the Judicial Code. 28 U. S. C. Sec. 344(b).

This cause is one of several which originated in the Circuit Court and the Superior Court of Cook County, Illinois, for an accounting by the Board of Education of the City of Chicago, Illinois, and the order entered in this case denying the motion to vacate the final decree entered and to dismiss the suit was reviewed on appeal by the Supreme Court of Illinois. Neither the Circuit Court nor the Superior Court filed an opinion. The judgment of the Supreme Court was entered March 21, 1944 (R. 197), but a petition for rehearing was filed in apt time (R. 198), and the judgment became final on May 11, 1944, on which day the petition for rehearing was denied. (R. 207.)

It is claimed that this Court has jurisdiction to review the judgment of the Circuit Court because the Supreme Court of Illinois failed or refused to adjudicate the rights of petitioners claimed by them under Section 1 of Amendment XIV of the Constitution of the United States and disposed of the case upon non-federal grounds which were unsubstantial and untenable or which were not of such nature and character as to serve as sufficient grounds of decision independent of the federal questions.

It is claimed by petitioners that their decree, still standing as it does, final, unvacated and unmodified, is property

which is protected by the Fourteenth Amendment, that an essential attribute of the decree is the right to enforce it by any remedy normally afforded by the law to enforce any decree against a municipal body, and that the refusal of the Supreme Court of Illinois, to enforce the decree for reasons other than want of jurisdiction to enter the decree on the part of the court which entered it, has been to deprive petitioners of their property in their decrees and to destroy those decrees without due process of law and to deny them equal protection of the laws in violation of Section 1 of Amendment XIV of the Constitution of the United States. The Supreme Court of Illinois failed or refused to pass upon these questions, and thereby deprived petitioners of their privilege to have their claim of federal constitutional right judicially determined.

It is claimed by petitioners that the Supreme Court of Illinois was without power and authority to re-examine the propriety of the decree as respects the nature of the causes of action and claims which the decree conclusively adjudicated in favor of petitioners, usurped judicial power in so doing, and thereby deprived petitioners of their property without due process of law and denied to them equal protection of the law.

It is claimed by petitioners that the denial to them by the Supreme Court of Illinois of the right to enforce their decree is to permit the Board of Education to take or destroy or give to another the private property of petitioners received by the Board to petitioners' use without compensation to them, in violation of Section 1 of Amendment XIV of the Federal Constitution.

It is claimed by petitioners that the Supreme Court of Illinois applied as binding upon petitioners a judgment and decision entered in a case to which they were not parties and in which they were not represented, thereby de-

priving them of their day in court and of due process of law.

Where the State court says in its opinion that the property rights of the litigant are determined by the decision in another case of like character, as it did in this case, and holds that the decrees are unenforceable, the fact that it enters a judgment dismissing the appeal on the ground that the questions presented have become moot does not avoid the jurisdiction of this Court where a title or right of the litigant, specifically claimed in the State court under the Constitution of the United States, is denied by the State court. Regard must be had to substance and not just to form to assure due process.

Statement of When and How the Federal Jurisdictional Questions Were Raised and What Disposition Was Made of Them.

Other than the original pleadings on which the decree in the accounting suit was entered, the only pleading before the Circuit Court of Cook County on the proceedings to vacate petitioners' decree and dismiss the accounting suit was the motion of the Board of Education. (R. 176-182.) Pursuant to the Illinois practice, petitioners orally advanced the grounds upon which they contended the motion of the Board of Education should be denied. The Circuit Court filed no opinion in connection with its order and judgment denying the motion of the Board of Education.

In their brief in the Supreme Court of Illinois* in sup-

* The briefs filed by the parties in the Supreme Court of Illinois have been certified to this Court. The practice of making formal assignments of error on the record on appeal does not obtain in Illinois. Instead, the grounds of appeal and questions sought to be raised on appeal are required to be set forth clearly in the briefs of the parties. It is sufficient if the grounds upon which an appellee seeks to sustain the judgment below appear from an examination of the entire brief. *Swain v. Hoberg*, 380 Ill. 442, 44 N. E. (2d) 38.

port of the order of the Circuit Court denying the Board's motion petitioners urged and argued, among others, the propositions:

(1) The decree became final thirty days after its entry, was conclusive of all questions which were or could have been presented in the proceeding in which it was entered, and jurisdiction and judicial power was thereupon lost to vacate or amend it for the purpose of correcting any alleged error involving the merits of the case. (Brief, pp. 10, 15, 18, 19, 20, 33.)

(2) The sole issue open for decision on the appeal was whether petitioner's decree was valid and therefore enforceable, and this issue was to be determined by the limited inquiry as to whether the decree was entered by a court of competent jurisdiction in adversary proceedings upon appropriate pleadings and after full hearing, and whether the time within which a court had power and jurisdiction to vacate or modify the decree had elapsed. (Brief, pp. 10, 11-14, 15-47.)

(3) Petitioners had a vested property right in their decree and the vacation of that decree on any grounds other than lack or abuse of jurisdiction on the part of the court which entered it, would deprive petitioners of their property without due process of law in violation of Section 1 of Amendment XIV of the Constitution of the United States. (Brief, pp. 10, 48.)

(4) Any attempt to apply to the decree the decision and judgment of the Supreme Court of Illinois in *Leviton v. Board of Education*, 374 Ill. 594, 30 N. E. (2d) 497, to which proceeding none of these petitioners was a party and in which their decree was not involved, would be to adjudicate the rights of petitioners without a hearing and to deny to them due process of law, contrary to Section 1 of Amendment XIV of the Constitution of the United States. (Brief, pp. 47, 48.)

The Supreme Court of Illinois failed to pass upon any of the foregoing federal constitutional questions specifically claimed in petitioners' brief. (R. 185-196.) It held that

all questions presented were moot and dismissed the appeal on the ground that the prior decision of the Court in *Leriton v. Board of Education*, 385 Ill. 599, 53 N. E. (2d) 596, was tantamount to a decision that although the decree was a decree of record it created no liability against the board of education, and could not be paid by it under the Illinois Constitution, (R. 193,) and that as a consequence the decision of the Court on the question of whether the Circuit Court was right or wrong in denying the motion of the Board of Education to vacate the decree would afford no effective relief to either party to the decree, thus rendering all questions purely academic and abstract. (R. 193, 195, 196.)

The ground of decision that the questions presented on the record were academic, abstract and moot was injected into the case for the first time in the opinion of the Supreme Court of Illinois. This ground of decision could not be and was not anticipated by the parties. *Leriton v. Board of Education*, 385 Ill. 599, 53 N. E. (2d) 596, the decision which the Court held to be tantamount to a holding that petitioners' decree could not be enforced and which the Court regarded as having rendered moot all questions in the case at bar, was not decided until several months, (January 20, 1944,—R. 237, in *Lewis v. Board*) after the case at bar was submitted to and taken under advisement on September 24, 1943. (R. 184.)

Nor could the petitioners anticipate that in the absence of a holding that the decree was void for want of jurisdiction in the court which entered it, the Supreme Court of Illinois would deny petitioners the right, theretofore afforded to all holders of final, valid judgments against municipal bodies, to enforce their decrees by the usual remedies. Prior to the time of its decision in the case at bar, the Supreme Court of Illinois had held without a single exception that a final decree entered by a court of

competent jurisdiction was in itself conclusive of the right of the judgment creditor to receive payment and of the judgment debtor to take all steps necessary to bring about such payment.

In their petition for rehearing petitioners claimed that the Court by its decision had denied them rights granted to them by Section 1 of Amendment XIV of the Constitution of the United States. In support of their claim petitioners pointed out:

(a) That the Court had overlooked and misapprehended the claims of federal constitutional rights asserted in petitioners' brief. (R. 200.)

(b) That the failure or refusal of the Court to pass upon the validity of petitioners' decree and upon the merits of the case presented by the record on appeal, had condemned their decrees without a hearing and thereby denied them due process of law. (R. 205, 206.)

(c) By dismissing the appeal, the Court, while leaving the decree standing on the record of the Circuit Court of Cook County, destroyed the property rights of petitioners in their decree by holding the decree was not a corporate obligation of the Board of Education and could not be enforced against it. (R. 206.)

(d) That the attempt of the Court to apply its judgment in *Leviton v. Board of Education*, 374 Ill. 594, 30 N. E. (2d) 497, as binding upon petitioners deprived them of their day in court and denied them due process of law. (R. 205-6.)

(e) That the case before the Court on the record was not one involving a decree entered upon petitioners' tax warrants, as stated by the Court in its opinion, but rather was one entered upon the legal duty and obligation of the Board of Education to account for moneys had and received by the Board of Education to the use of petitioners whose ownership of the moneys and right to receive payment thereof from the Board of Education was evidenced by the contracts of assign-

ment of that Board, called "tax anticipation warrants", which the Board had sold to petitioners. (R. 202.)

(f) That the judgment and decision of the Court denied petitioners equal protection of the law guaranteed by Section 1 of Amendment XIV to the Constitution of the United States in that the Court had declined or failed to afford to petitioners the benefit and advantage of rules of law and remedies for enforcement of their judgments which were afforded to and enjoyed by other persons and classes of persons in substantially the same position and substantially the same circumstances as petitioners. It was pointed out that such rules and principles are:

1. That a final decree entered by a court of competent jurisdiction is conclusive of the merits of the claim adjudicated by the decree and after passage of the term or corresponding requisite statutory period, a court is without jurisdiction to vacate or inquire into it on grounds other than lack of jurisdiction of the court which entered it. (R. 203.)

2. That after their decree was entered and had become final, petitioners stood in exactly the same position as any other holder of a valid, final decree against a municipal corporation, and were entitled to the benefit and advantage of the rules which render all final, valid decrees immune from collateral attack, which make such decrees sufficient in themselves to establish the corporate obligation of the municipal corporation to take all steps necessary to bring about payment thereof, and which require that full faith and credit be given to all final and valid judgments and decrees. (R. 204-205.)

3. That when a municipality, regardless of its legal character, has received moneys to the use of another and has failed to pay them to the rightful owner, such rightful owner, irrespective of the legal character of or the label placed upon the instrument by which his title to the moneys is evi-

denced, will be awarded as compensation a valid, enforceable decree or judgment against such municipality. (R. 204-205.)

The Supreme Court of Illinois denied the petition without opinion. (R. 207.)

The Questions Presented.

The following questions arise upon the record and are in issue:

1. Did the Supreme Court of Illinois fail or refuse to decide federal constitutional questions presented to it and are the non-federal grounds of decision advanced by that Court untenable or unsubstantial or of insufficient breadth to sustain the decision and judgment of the Supreme Court of Illinois in the absence of a decision of the federal questions raised by petitioners?
2. Were the rights of petitioners so prejudiced and adversely affected by the decision and judgment of the Supreme Court of Illinois as to give them the right to a review thereof by this Court on writ of certiorari, despite the fact that the judgment of the Supreme Court of Illinois dismissing the appeal of the Board of Education is on its face in favor of petitioners?
3. Did the Supreme Court of Illinois go behind the decree in the accounting suit and reconsider the questions conclusively determined by said decree and decide, because of what it regarded as lack of merit in the claims on which the decree was entered, that the decree should never have been entered, and thereby usurp judicial power and destroy the vested rights of these petitioners in their decree without due process of law and deny to petitioners the equal protection of the law?
4. Has the Supreme Court of Illinois, by its refusal to

pass upon the validity of the money decree of these petitioners, denied them their day in court on a question vital to enforcement of their property rights and so denied them due process of law?

5. Did the Supreme Court of Illinois, by its judgment, the effect of which was to release the Board of Education of its obligation to pay the decree, take the property of petitioners and give it to the Board of Education and thereby deprive them of their property without due process of law?

6. Did the Supreme Court of Illinois, by deciding that the Board of Education was not under duty to account to these petitioners for their property received by said Board to their use, which it paid out to others, permit said Board to take the property of these petitioners without compensation, thereby depriving them of their property without due process of law?

7. Did the Supreme Court of Illinois deny to these petitioners the advantages of and redress afforded by the principles of law, the presumptions and the remedies which had theretofore and have since been afforded to all other holders of judgments against Illinois municipal corporations in like circumstances and having claims substantially identical with those of petitioners, and so deny to petitioners the equal protection of the law?

8. If, as contended by petitioners, the Supreme Court of Illinois went back of the decree of the Circuit Court of Cook County, Illinois, and re-examined the propriety of the decree as respects the nature of the causes of action and the claims which the decree adjudicated and thereupon held that the decree was unenforceable because of what it regarded as lack of merit in such claims and causes of action, was such action on its part a usurpation of judicial power and were petitioners thereby deprived

of their property without due process of law and denied the equal protection of the law guaranteed them by Section 1 of Amendment XIV of the Constitution of the United States?

Reasons for Allowance of the Writ.

The judgment entered in this case, dismissing the appeal of the Board of Education from the order denying its motion to vacate the decree and dismiss the suit, is on its face in favor of the judgment holders, but since the Supreme Court of Illinois has based its judgment of dismissal of the appeal upon its judgment in *Leviton v. Board of Education*, 385 Ill. 599, which it says is tantamount to a decision that the money decrees of petitioners created no liability against the Board of Education and cannot be paid by the Board under the State Constitution, it has in effect reversed the judgment of the Circuit Court and vacated the decree for accounting and dismissed the suit. A decision by this Court reversing the judgment of the Supreme Court of Illinois in the *Leviton* case (*Lewis v. Board* in this Court) and in *People of the State of Illinois, ex rel. Reconstruction Finance Corporation, et al. v. Board of Education*, this day filed, with which we move that this case be consolidated, will remove the cloud upon the judgments of these petitioners and others which stand of record in the Circuit Court and the Superior Court of Cook County against the Board of Education, but we deem it necessary and proper that this Court grant the petition for writ of certiorari in this case, as representative of other cases of like status, so that it will have before it a complete picture of the litigation here involved, and that it reverse the judgment of the Supreme Court of Illinois in this case and direct that the judgment of the Circuit Court be affirmed.

The reasons for granting the petition for writ of cer-

tiorari in this case are the same as the reasons for granting the petitions in the companion cases of *People, ex rel. Reconstruction Finance Corporation v. Board of Education*, and *Lewis v. Board of Education*, and we adopt in this case in support of this petition the brief annexed to the petition in *The People, etc. v. Board of Education*.

Respectfully yours,

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